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Office - Supreme Court, U.S.

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ALEXANDER L. STEVAS.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1983

No. 83-1430

J. BARANELLO & SONS,

Petitioner,

vs.

CITY OF PATERSON,

Respondent.

INDEPENDENT ELECTRICAL CO., INC.,

Cross-Petitioner,

vs.

CITY OF PATERSON,

Respondent.

**CROSS-PETITION FOR CERTIORARI ON WRIT OF
CERTIORARI TO THE SUPREME COURT
OF NEW JERSEY**

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Questions Presented for Review

1. Did the New Jersey Courts err in holding that an arbitration panel deciding commercial disputes must disclose in detail the basis of its award so as to establish to the satisfaction of a reviewing court that the arbitrators followed all of the technical rules of evidence and/or interpretation?

2. Did the New Jersey Courts err in holding that a *possibly* erroneous ruling on the admissibility of certain evidence which *may* have affected the arbitration award required its vacation?

3. Did the New Jersey Courts err in holding that an arbitration award is to be vacated upon a finding by the reviewing court that the arbitrators *may* have interpreted relevant contract provisions differently from the reviewing court's interpretation?

Parties to the Proceedings Below

The parties below include the City of Paterson, New Jersey, Petitioner J. Baranello & Sons (a New York partnership), Cross-Petitioner Consolidated Precast, Inc., (a Connecticut corporation) and the following New Jersey corporations: Cross-Petitioner Independent Electrical Co., Inc.; Davidson & Howard Plumbing & Heating, Inc.; and The Conditioning Co., Inc. Each of the aforesaid contractors arbitrated their claims against the City of Paterson in a consolidated arbitration proceeding, sought confirmation of the award in the State court by consolidated actions, responded to the City's appeal and filed consolidated unsuccessful Petitions for Certification to the New Jersey Supreme Court.

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Official and Unofficial Reports of Opinions of the Courts Below

The opinions involved in the within action have, to date, not been reported in either the official or unofficial reporting system.

Grounds for Jurisdiction

The judgment to be reviewed was issued by the Supreme Court of New Jersey under date of November 21, 1983, and was entered on November 28, 1983.

The statutory provisions which confer jurisdiction upon this Court are 28 U.S.C. §1257(3) and 9 U.S.C. §§1-14.

The within Cross-Petition arises out of the same action involved in the Petition for Writ of Certiorari filed by J. Baranello & Sons under Docket No. 83-1430, received by Cross-Petitioner Independent Electric Co., Inc. on March 21, 1984 and the Cross-Petition of Consolidated Precast, Inc., received by Cross-Petitioner Independent Electric Co., Inc. on March 29, 1984.

The Statute at Issue

The pertinent sections of the Arbitration Act, 9 U.S.C. §§1-14 are set forth in the appendix of the Cross-Petition of Consolidated Precast, Inc. (A23 to A26).

Statement of the Case

In April 1977 cross-petitioner Independent Electric Co., Inc. ("Independent"), a New Jersey corporation, entered into a contract with respondent City of Paterson, New

Jersey, for the performance of electrical work on a multi-prime project for the City of Paterson. The other prime contractors were petitioner J. Baranello & Sons, a New York partnership, Cross-Petitioner Consolidated Precast, Inc., a Connecticut corporation, Davidson & Howard Plumbing & Heating, Inc., a New Jersey corporation, and The Conditioning Co., Inc., a New Jersey corporation. The various prime contracts included the standard form "A.I.A. Document A201, General Conditions of the Contract for Construction" issued by the American Institute of Architects (the "General Conditions"). (Relevant portions of the General Conditions are set forth in the Appendix to the Cross-Petition of Consolidated Precast, Inc. (at A27 to A32)).*

Article 7.10 of the General Conditions (A29) provides that "[A]ll claims, disputes and other matters in question arising out of, or relating to, this contract, or the breach thereof . . . shall be decided by arbitration in accordance with the construction industry arbitration rules of the American Arbitration Association . . ." The article goes on to provide that "the award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof."

Work on the project was to commence in May, 1977. The project was delayed virtually from its inception. Disputes arose between Independent and the City of Paterson regarding the aforesaid delays as well as other matters, including Independent's right to payment of its retainage and resolution of change orders. Similar disputes arose between the City of Paterson and the other contractors.

* All appendix references herein are to the Appendix of the Cross-Petitioner Consolidated Precast, Inc.

The aforesaid project disputes resulted in the commencement of an arbitration between the City of Paterson and the various contractors.

The arbitration was heard by a panel of arbitrators in 23 full-day sessions between September, 1980 and May 27, 1981. During the arbitration, all of the contractors presented their respective claims against the City for retainage, delay damages and additional compensation for unresolved change orders. The City of Paterson, in turn, presented its claims against each of the contractors.

Throughout the course of the arbitration hearings, the arbitrators permitted all parties to present whatever proofs they wished to present. For example, the arbitrators at a hearing held on December 17, 1980 denied the application of the City to preclude evidence from being submitted by the contractors which would relate to delay claims arising before December 1977, the time when the City contended the requisite written notices of claim were given. The City of Paterson's motion was premised upon Article 8.3.2 of the General Conditions (A30) which required that all claims *for time extensions* (not monetary compensation) be made in writing in the architect no more than 20 days after the occurrence of the delay. By the time of the City of Paterson's motion, evidence had already been submitted by the contractors regarding written notification of delay and requests for extension of time as early as June, 1977, and the arbitrators had received in evidence minutes of job meetings from June, 1977 which contained statements that the progress of the entire project was being delayed.

On October 19, 1981, the arbitrators issued a unanimous award which encompassed all of the claims presented (A18). The award provided for the following relief with respect to the claims between Independent and the City of Paterson:

CITY OF PATERSON shall pay to INDEPENDENT ELECTRICAL CONSTRUCTION CO., INC. the sum of FOUR HUNDRED EIGHTY-TWO THOUSAND NINE HUNDRED FIFTY DOLLARS (\$482,950.00), which sum includes all retainage due under the contract between the Parties, plus the amount resulting from delays and unresolved changes, where applicable less any liquidated damages assessed against the contractor.

The award decided the claims between the other contractors and the City of Paterson in a similar fashion. The respective plaintiffs filed separate actions in the Superior Court of New Jersey, Law Division, for a judgment confirming the award and each contractor sought prejudgment interest. After consolidating these actions, the Court on November 13, 1981 confirmed the awards and awarded prejudgment interest from the date of the award (A14). The Court found that the City had failed to establish any grounds for vacating or modifying the award.

The City appealed the judgment confirming the award. The Appellate Division reversed the trial-court judgment, vacated the award and remanded the matter "for a new [or supplemental] arbitration proceeding." (A2).

The ruling of the Appellate Division was based on its interpretation that Articles 12.1.6, 12.1.7 and 12.2.1 of the General Conditions (A29 to A30) required that written notice of certain type claims be given to the architect within 20 days of various triggering events. The Appellate Division held that the contract precluded recovery of damages occurring more than 20 days prior to said notification (A10). Since the arbitrators had failed to limit the contractors' proofs on the issue of delay damages to 20 days prior to written notification of claims under the cited contract provisions, the Appellate Court *assumed*

that the arbitrators awarded delay compensation for the alleged non-compensable period beyond the 20-day period. Based on said assumption, the Appellate Division concluded that the entire award must be vacated (A10 to A11).

The Appellate Division relied upon sections of the General Conditions different from those relied upon by the City of Paterson in its motion to preclude evidence. The City of Paterson had relied on Article 8.3.2 (A30), the time provision. It was amply demonstrated that these written notices of delays were given from the start of delays by Independent through the job meetings and by formal letters. Also, the City admitted that it had actual knowledge of the obvious delays from their inception. The Appellate Division found that, under its interpretation of the contract, actual knowledge of the delays and of claims was meaningless absent written notification (A9 to A10).

Finally, the Appellate Division inexplicably ignored the controlling provision of the contract, Article 7.4.1 of the General Conditions (A29), which reads as follows:

Should either party to the contract suffer injury or damage to person or property because of any act or omission of the other party or any of his employees, agents or others for whose acts he is legally liable, claims shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Each of the contractors filed Petitions for Certification with the Supreme Court of New Jersey for review of the judgment of the Appellate Division. These Petitions were denied by Order dated November 21, 1983, and entered on November 28, 1983 (A1).

The Federal Question Presented.

The questions presented by this case concern the permissible scope of judicial review of an arbitration award governed by the Federal Arbitration Act, 9 U.S.C. §§1-14, and whether a reviewing court can vacate an arbitration award due to the court's uncertainty as to whether the arbitrators, in the view of the court, correctly interpreted the contract or properly ruled on evidence questions, and can a reviewing court vacate an award based upon the *mere possibility* that the arbitrators entered an award contrary to the *court's* own view of the issues.

The effect of the Federal Arbitration Act was not raised as an issue before the Law Division of the Superior Court of New Jersey or before the Appellate Division of the Superior Court. Argument before the Appellate Division was held in November, 1982, prior to the February, 1983 decision of this Court in *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, — U.S. —, 74 L.Ed.2d 765, 103 S.Ct. 927 (1983), which clearly stated the applicability of the Federal Arbitration Act to state court proceedings involving disputes of the type herein involved. The conflict of the Appellate Division judgment with the Federal Arbitration Act was raised by the Petitioner Baranello and the Cross-Petitioner Consolidated Precast in their Petitions for Certification, but the Supreme Court of New Jersey denied, without opinion, the Petitions of all the contractors (A1).

ARGUMENT

Cross-Petitioner Independent is seeking to confirm an arbitration award rendered against a political subdivision of the State of New Jersey. Save for the fact that Independent is a New Jersey corporation, the posture of Inde-

pendent in this case is identical to the position of the Petitioner and the Cross-Petitioner Consolidated Precast and the same relief is sought.

Although Independent is incorporated in New Jersey, the situs of the construction project, its contract on the subject project was clearly a "transaction involving commerce" within the meaning of 9 U.S.C. §1. Two of the prime contractors, Petitioner Baranello and Cross-Petitioner Consolidated Precast, maintained their offices outside of New Jersey. The work of Independent was intertwined with and had an impact upon that of both Baranello and Consolidated Precast, as well as the work of the other prime contractors. *Perforce*, Independent's work had an impact on interstate commerce, at least to the extent of its involvement with the work of Baranello and Consolidated Precast. The interrelationship of the various prime contracts was implicitly acknowledged by virtue of the consolidated proceedings in the arbitration and state court. Not only did the project involve two out-of-state contractors, but the project architect, John Ciccone, was located in Philadelphia, Pennsylvania as was the City's consulting engineer, Paul H. Yeoman's, Inc. The out-of-state presence of certain contractors and owner representatives generated a considerable amount of interstate communication, written and telephonic. The project having had an impact on interstate commerce, Independent, as a contractor on said project, should be able to avail itself of the Federal Arbitration Act.

If this Court were inclined to hold that the Federal Arbitration Act was applicable to the arbitration of the claims of Baranello and Consolidated Precast, but not the claims of Independent or the other contractors, the result would be chaos. In a consolidated arbitration, such as in this case, which involved some out-of-state contractors, the arbitrators would have differing obligations with re-

spect to the claims of the out-of-state contractors. Upon issuance of the award in such consolidated proceedings, the sufficiency of the award as to the out-of-state contractors would be evaluated by application of a differing standard, the federal standard, than that applied to the other contractors, the state standard application of differing standards to parties in a single arbitration proceeding could result in the award to the out-of-state contractors being confirmed and the award to the in-state contractors being vacated. In the re-arbitration of the in-state contractors claims, the owner might be confronted with a finding that the out-of-state contractors, whose awards had been confirmed and were thus not parties to the re-arbitration, were liable to the owner for the owner's enhanced liability to the in-state contractors in the second arbitration, but the owner would have no recourse against said out-of-state contractors for indemnification.

For example, assume a multi-prime construction project results in claims being asserted by various primes, save for the prime contractor for general construction, against the project owner predicated upon delays for which the owner claims the contractor for general construction is responsible. All of the primes are out-of-state contractors except for the contractor for general construction and the project, itself, is a local project having no impact on interstate commerce save for the general contractors' participation. The claims are arbitrated in a consolidated arbitration and the owner is found liable for half the amount of the claims of each of the claimant contractors and the contractor for general construction is, in turn, found liable to the owner in the full amount of the owner's liability to the other contractors. Application is made to the same state court judge by the successful contractors and the owner to confirm the award. The award to the out-of-state contractors against the

owner is confirmed under the Federal Arbitration Act, but the award in favor of the owner is vacated under state law which conflicts with the Federal Arbitration Act, so as to require the owner to commence further arbitration proceedings. Said further proceedings result in the contractor being relieved of any liability to the owner on the ground that the contractors, who have the confirmed award, did not comply with the notice provisions of the contract and, therefore, the owner could not properly be liable to them and *perforce* could not have a viable claim for indemnification against the prime contractor for general construction.

In the posited hypothetical the owner has been the victim of inconsistent results generated by the application of differing criteria, federal and state, to the same award. In order to avoid such an occurrence, the applicable rule of law should be, as Independent Electric suggests, that, if the *construction project* has an impact on commerce, *all* arbitrable claims *arising out of said project* are encompassed by the Federal Arbitration Act.

Independent's legal position is thus identical in all material respects to that of Baranello and Consolidated Precast and, therefore, relies upon the cogent arguments previously advanced by both Baranello and Consolidated Precast and respectfully refers the Court to their respective Petition and Cross-Petition.

CONCLUSION

Based upon the foregoing and upon the reasoning set forth in the Petition for Certiorari filed by J. Baranello & Sons under Docket No. 83-1430 and the Cross-Petition of Consolidated Precast, Inc., it is submitted that this Court should grant the Cross-Petition of Independent Electrical Construction Co., Inc.

Dated: Newark, New Jersey
April 2, 1984

Respectfully submitted,

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*Defendant-Respondent
On the Cross-Petition.*

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**ON WRIT OF CERTIORARI TO THE SUPREME
COURT OF NEW JERSEY**

**BRIEF IN OPPOSITION TO PETITION
AND CROSS-PETITIONS FOR A WRIT OF
CERTIORARI TO THE NEW JERSEY SUPREME COURT**

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Nos. 83-1430, 83-1683, 83-1725

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**BRIEF IN OPPOSITION TO PETITION
AND CROSS-PETITIONS FOR A WRIT OF
CERTIORARI TO THE NEW JERSEY SUPREME COURT**

COUNTER-STATEMENT OF THE CASE

Procedural History of the Litigation

The dispute between the respondent City of Paterson and the petitioner J. Baranello and Sons, a New York

corporation ("Baranello") and the cross-petitioners, Consolidated Precast, Inc., a Connecticut corporation ("Consolidated") and Independent Electrical Construction Co., Inc. ("Independent") began in early 1977 with the execution of five contracts between Paterson, Consolidated, Independent, Baranello, Davidson Howard and Howard Plumbing and Heating, Inc. and the Conditioning Co., Inc. for the construction of a municipal office building within the City of Paterson, New Jersey. The initial contract amounts totalled \$4,841,673.00 and required completion of the structure within a fixed period of time. Arbitration was required for all contract disputes.

From the outset several factors delayed the job, including subsurface conditions and disputes over the proper method and sequence of working. Some contractors demanded arbitration against the City to litigate the cost of these delays. The City, in turn, sought to join in the arbitration all possible responsible parties, including Baranello, the general contractor.

Baranello's response was to file a complaint seeking injunctive relief in the Superior Court of New Jersey, Chancery Division in an effort to enjoin the arbitration against it. The suit was commenced in June, 1978 and judgment was rendered against Baranello shortly thereafter. Baranello filed an appeal from that judgment to the Appellate Division of the New Jersey Superior Court which appeal was decided adversely to Baranello on May 25, 1979. See *J. Baranello & Sons v. City of Paterson*, 168 N.J.Super. 502, 403 A.2d 919 (App. Div. 1979). Baranello subsequently sought certification to the New Jersey Supreme Court; this petition was denied on September 18, 1979. *J. Baranello & Sons v. City of Paterson*, 81 N.J. 340, 407 A.2d 1214 (1979).

As a direct and proximate result of the litigation commenced by Baranello no other party would arbitrate until Baranello was either joined as a party to the arbitration or excused from arbitrating. Baranello's lawsuit imposed a delay of approximately eighteen months in the commencement of the arbitration proceedings.

Twenty-three arbitration hearings were held from the period commencing in September, 1980, until May, 1981. The arbitration award was subsequently rendered and dated October 8, 1981 and signed by two arbitrators. As a result of the award, all five contractors received a total of \$3,035,250.00 or approximately \$2,500,000.00 more than was payable under the original contracts.

On or about October 28, 1981 complaints and orders to show cause were filed in the New Jersey Superior Court, Law Division, Passaic County by each of the five contractors naming the City as a defendant in each case. The complaints sought confirmation of the arbitrator's award. On November 13, 1981 the New Jersey Superior Court heard arguments in support of the application for confirmation and in opposition thereto and at the conclusion thereof granted summary judgment in favor of the contractors confirming each of the awards. A formal order for judgment was entered on November 23, 1981.

The City filed an appeal from the judgment of the Law Division to the Appellate Division of the Superior Court of New Jersey on November 24, 1981. On August 2, 1983 the Appellate Division of the New Jersey Superior Court reversed the judgments confirming the awards, vacated the awards and remanded the matter "for a new arbitration proceeding". *J. Baranello & Sons v. City of Paterson*, — N.J.Super. —, — A.2d —, (App. Div. 1983).

Subsequently, by order dated November 21, 1983 and filed November 28, 1983 the New Jersey Supreme Court, denied without opinion the petitions for certification of each of the contractors including Baranello and Consolidated. *J. Baranello and Sons v. City of Paterson*, — N.J. —, — A.2d — (1983).

Throughout the course of the litigation in the New Jersey State Courts, the petitioner and cross-petitioners predicated their claims for relief upon the applicability of New Jersey law and did not assert a federal question until the petition for certiorari was filed with this Court.

The matter was remanded to the American Arbitration Association for additional proceedings consistent with the decision of the Appellate Division of the New Jersey Superior Court. The same two arbitrators who rendered the award now under appeal were assigned to arbitrate the remanded proceedings. At the conclusion of the proceedings the arbitrators unanimously made a new award on or about April 16, 1984 which award substantially increased the amount of monies awarded to each of the five contractors.

Thereafter, on or about May 2, 1984 the petitioner, J. Baranello and cross-petitioner, Consolidated Precast filed verified petitions in the United States District Court for the District of New Jersey seeking to confirm the award of the arbitrators. The matters are presently returnable before the District Court on May 29, 1984.

ARGUMENT

Point I.

Certiorari should not be granted in this matter.

Petitioner-Respondent, and Cross-Petitioner now seek, after unfavorable decisions from both the Appellate Division of the Superior Court of New Jersey and the Supreme Court of New Jersey, to amend the grounds on which they appeal to include the federal question of whether the Arbitration Act, 9 U.S.C. sections 1 through 14 is applicable to this controversy.

To invoke the jurisdiction of this Court, the petitioners now attempt to introduce a federal issue which was never presented on the state level, although they had ample opportunity to do so. It is well settled that the Supreme Court will not decide a question not raised or resolved in the lower courts. *Youkaim v. Miller*, 96 S.Ct. 1399, 425 U.S. 231, 47 L.Ed. 2d 701 (1976). Moreover, on any appeal, the general rule is that an appellate court will not consider an issue not passed upon by the court below. *Singleton v. Wulff*, 96 S.Ct. 2868, 428 U.S. 106, 49 L.Ed. 2d 826 (1976) on remand 538 F.2d 811 (8th Cir. 1976). To allow petitioner to raise this issue now would subjugate the appellate process, and would, in effect, allow for a *de novo* adjudication of the issues.

Petitioner and Cross-Petitioners place considerable reliance on this Court's decision in *Moses H. Cone Hospital v. Mercury Construction Corp.*, — U.S. —, 74 L.Ed. 2d 765, 103 S.Ct. 927 (1983), even though the holding in *Cone* has no applicability to the matters herein. In *Cone*, there was ongoing and parallel litigation between the state

and federal courts; the federal issue was *not* first entertained on appeal.

Petitioners and Cross-Petitioners attempt to justify their lack of timeliness in addressing the federal issue by alleging that the state courts ability to adjudicate a matter under the Federal Arbitration Act was only decided *after* the state appellate argument when this Court decided *Cone*. However, the applicability of the Federal Arbitration Act in a state court was not at issue in *Cone*; rather, the issue was, whether in light of the parallel litigation, should the federal court abstain until the state court had rendered a decision. There was merely dicta on the question of the applicability of the Federal Arbitration Act to state actions. Consequently, petitioner's and cross-petitioners' reliance upon the timing of the *Cone* decision is at best, dubious.

Moreover, the Federal Arbitration Act has always been applicable to this matter due to diversity in citizenship, making this an action in commerce, as defined by the Act. *Monte v. Southern Delaware County Authority*, 321 F.2d 870 (3rd Cir. 1963). Therefore, if the petitioner and cross-petitioners wished to allege the applicability of the Act, it was ripe for determination in the state court proceedings, and it was incumbent upon them to raise it at that time. Petitioner and cross-petitioners not only had the choice of a federal or state forum but also had the choice of addressing both state and federal questions in the chosen forum.

Furthermore, petitioner and cross-petitioners make no allegation as to any difference an adjudication under the Federal Act would have from the adjudication under the

state act. In actuality, Petitioner Baranello contends in its Petition for *Certiorari*, at page 3, that both statutes are similar in the applicable provisions of contract interpretation and evidence.

It therefore appears that to grant this petition for *certiorari* would result in duplicitous litigation which would ultimately not change in any way the decisions of the lower courts.

Point II.

The arbitration award should not be allowed to stand.

The opinion of the Appellate Division of the New Jersey Superior Court vacated the arbitrators' decision which improperly awarded petitioners approximately \$2,500,-000.00 in additional public monies. In doing so, that court merely applied the well settled principle that courts will not permit arbitrators to ignore contract provisions or rewrite agreements to suit the arbitrators subjective ideas of justice or fair dealing.

Numerous cases have enunciated the appropriate standard of judicial review of arbitration awards. Ordinarily awards will be upheld in the absence of good reason to reject them. *Order of Ry. Conductors and Brakemen v. Clinchfield R. Co.*, 407 F.2d 985, (5th Cir. 1969) *certiorari* denied 90 S.Ct 104, 396 U.S. 841, 24 L.Ed.2d 92 (1969). Judicial review is narrow, generally confined to errors which appear on the face of the award, and every intendment is indulged in favor of the award.

However, while lower courts are to give considerable deference to decisions of arbitrators, such deference is

not conclusive. *International Union of Operating Engineers, Local #450 v. Mid-Valley, Inc.*, 347 F.Supp. 1104 (D.Tex. 1972). If an arbitrator meant to decide an issue according to law but was mistaken in some palpable and material point, the award should be set aside. Arbitrator's findings of fact are conclusive unless they are arbitrary or capricious and not supported by evidence. *International Auto Sales and Service, Inc., v. General Truck Drivers, Chauffeurs, Warehousemen and Helpers Local Union #270*, 311 F.Supp. 313 (D.LA, 1970).

The Appellate Division noted that while arbitrators have broad powers, "especially in the private sector", they may not disregard the terms and conditions of the contract. (A-9).^{*} Indeed, several New Jersey labor relations cases emphasize the care arbitrators must take when dealing with public employees and employers, that their awards be guided by "pertinent statutory criteria as well as the public interest and welfare," *Kearny P.B.A. Local #21 v. Kearny*, 81 N.J. 208, 217 405 A.2d 393, 397 (1979). See also the distinctions between public and private employee arbitrations, *State v. State Troopers Fraternal Association*, 91 N.J. 464, 469, 453 A.2d 176, 179 (1982).

This is not to say a public entity ought to automatically have its way in arbitrations. However, it offers the basis for stricter scrutiny of arbitrator's awards to be paid out of the public treasury.

Petitioner and Cross-Petitioners argue that if the Appellate Division decision implies strict standards of re-

^{*}This notation refers to the appendix of Petitioner Baranello.

view, there may be delays in the enforcement of arbitration awards. Here the work began in 1977 and the legal wrangling continues into 1984, seven years later. A substantial portion of the delay in adjudication is directly attributable to Baranello.

The argument overlooks that a substantial delay resulted from the injunction against arbitration in connection with the Baranello suit with Paterson. It seems unfair for the Petitioner to complain about the delay which Baranello itself imposed on the process. "Judicial interference" was not something Baranello seemed to fear.

The entire process has been complicated, undoubtedly by the number of parties, complaints, counterclaims and cross-claims over a range of issues including proper workmanship, responsibility for control, role of the architect, etc.; and the fact that six attorneys, two (and sometimes three) arbitrators and witnesses all had to coordinate schedules. Given these complexities none of the delay appears unwarranted or surprising.

The effectiveness of arbitration is threatened as much by the possibility of an irrational result as it is by the risk of delay. Unless the Appellate Division opinion is allowed to stand, any competent lawyer would have to advise his client that arbitration is swift but unsure. Attorneys would soon perceive that despite its advantages, arbitration carries a great risk of arbitrariness. When their decisions reflect disregard for the parties written intentions, arbitrators' awards ought to be vacated in order to protect the integrity of the arbitration process.

Suffice it to say that:

To merit judicial enforcement, an arbitration award must be grounded in the terms of the applicable con-

tract. If the arbitrators position is not rationally inferable from the contract, he has exceeded his jurisdiction. . . .

In re Arbitration Between Mary and William Harris,
140 N.J.Super. 10, 15, 354 A.2d 704, 707 (App. Div. 1976).

CONCLUSION

For the aforementioned reasons, it is respectfully submitted that the petition and cross-petitions for a writ of *certiorari* should be denied.

Date: May 21, 1984.

Respectfully submitted,
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